

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-03-SE-291
Schumacher Electric Corporation,)	NAL/Acct. No. 200432100010
Mt. Prospect, Illinois)	FRN # 0010291185

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 8, 2004

Released: April 12, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Schumacher Electric Corporation (“Schumacher”) apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000) for marketing unauthorized equipment in willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Section 2.803(a) of the Commission’s Rules (“Rules”).²

II. BACKGROUND

2. On November 5, 2003, the Enforcement Bureau (“Bureau”) received a complaint alleging that Schumacher was marketing a new line of SpeedCharge automobile battery chargers (“SpeedChargers”) at the ongoing Automobile Aftermarket Products Expo (“AAPEX”) in Las Vegas, Nevada.³ According to the complaint, Schumacher did not label the exhibited SpeedChargers under Section 15.19(a)(3) of the Rules,⁴ and did not display the trade show notice under Section 2.803(c) of the Rules. The complaint was supported by a sworn declaration of an individual who attended AAPEX. In the declaration, the individual states that he visited Schumacher’s AAPEX booth, that he observed a notice that categorized the Speedchargers as “FCC Class B Compliant,” that he noted that the SpeedChargers were not labeled as verified, that he was given “product catalogue tear sheets” describing the SpeedChargers (copies of which he attached), and that Schumacher’s Sales Manager told him that all displayed units were “final production units,” were “for sale,” and were ready to ship or would be ready to ship within two weeks.

3. On November 14, 2003, in response to the complaint, the Bureau issued a letter of inquiry

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a).

³ AAPEX was held from November 4 through 7, 2003.

⁴ 47 C.F.R. § 15.19(a)(3).

(“LOI”) to Schumacher.⁵ On December 4, 2003, Schumacher responded to the LOI.⁶ In its response, Schumacher stated that it exhibited “mock-ups” (*i.e.*, non-working display units) of SpeedCharger models SC 600A, SSC 1000A, SC 1200A, SSC 1500A, SC 2500A, SC 4000A, SC 6000A and SC 10000A.⁷ Schumacher further represented that it did not sell and/or take orders to sell any of the exhibited SpeedChargers at AAPEX.⁸

4. Of the exhibited models, Schumacher admitted that SpeedChargers SC 2500A, SC 4000A and SC 10000A had not been verified in accordance with the equipment authorization procedures prior to AAPEX.⁹ Schumacher further admitted that it did not display the trade show notice in its booth, or in the promotional materials it distributed, at AAPEX as required under Section 2.803(c). Schumacher explained that it did not believe such notice was required, because the models were mock-ups and not actual working units.¹⁰ Schumacher stated that in the future, it will implement “a policy of using the notice set forth in Section 2.803(c) for any units for which verification testing has not been completed prior to public display and for any promotional materials depicting such units even though the materials do not constitute an advertisement offering the sale or lease of the units.”¹¹

5. With respect to SpeedCharger models SC 600A, SSC 1000A, SC 1200A, SSC 1500A, and SC 6000A, Schumacher represented, and provided supporting documentation confirming, that the actual working devices had been verified as compliant with Commission technical emission standards prior to AAPEX.¹² Schumacher explained that the models exhibited at AAPEX were not labeled because they were only non-working mock-ups, but that the requisite labels under Section 15.19(a)(3) were properly affixed to the models’ actual working units.¹³

⁵ See Letter from Joseph P. Casey, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Don Schumacher, President/CEO, Schumacher Electric Corporation (November 14, 2003).

⁶ See Letter from John Waldron, Executive Vice President, Schumacher Electric Corporation to Kathy Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (December 4, 2003) (“LOI Response”).

⁷ LOI Response at 1.

⁸ *Id.* at 2.

⁹ *Id.* at 2-3.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 3.

¹² *Id.* In support, Schumacher submitted the verification reports for SpeedCharger models SC 600A, SSC 1000A, SC 1200A, SSC 1500A, and SC 6000A. See LOI Response at SCH000018-111.

¹³ See LOI Response at 2. In support, Schumacher attached a representative copy of a label, which complied with the requirements of Section 15.19(a)(3) and which had been affixed to all of its verified SpeedCharger actual working units. *Id.* at SCH000001.

III. DISCUSSION

6. Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.” Section 2.803(a)(2) of the Commission’s implementing regulations provides that:

Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including *advertising* for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless ... [i]n the case of a device that is not required to have a grant of equipment authorization issued by the Commission, but which must comply with the specified technical standards prior to use, such device also complies with all applicable administrative (including *verification* of the equipment or authorization under a Declaration of Conformity, where required), technical, labeling and identification requirements specified in this chapter [*emphasis added*].

As discussed below, the SpeedChargers are Class B digital devices that employ switching power supply assemblies, and as such are subject to the Commission’s verification equipment authorization procedures, marketing, labeling and identification requirements.

A. Non-verified equipment.

7. Under Section 15.101(a) of the Rules,¹⁴ manufacturers are required to test and verify that Class B external switching power supply devices comply with Commission technical standards, “prior to the initiation of marketing.”¹⁵ However, under Section 2.803(c) of the Rules, in limited circumstances, a manufacturer is allowed to market devices prior to completion of the verification procedure. Specifically, Section 2.803(c) provides that devices may be “advertised or displayed, *e.g.*, at a trade show or exhibition, prior to equipment authorization . . . *provided* that the advertising contains, and the display is accompanied by, a conspicuous [disclaimer] notice worded as follows: This device has not been authorized as required by the rules of the Federal Communications Commission. This device is not, and may not be, offered for sale or lease, until authorization is obtained.” Thus, Schumacher was allowed to exhibit models of SpeedCharger SC 2500A, SC 4000A and SC 10000A that were not verified at AAPEX provided that it conspicuously displayed the requisite disclaimer notice.

8. The Commission has not exempted exhibited non-working mock-ups of non-authorized devices from the trade show’s disclaimer notice requirement. In 1976, the Commission stated that non-authorized “prototypes, working models or mockups” of devices could be advertised or exhibited at trade

¹⁴ 47 C.F.R. § 15.101(a).

¹⁵ The Rules describe verification as “a procedure where the manufacturer makes measurements or takes the necessary steps to insure that the equipment complies with the appropriate technical standards. Submittal of a sample unit or representative data to the Commission demonstrating compliance” is generally not required. 47 C.F.R. § 2.902(a). The Rules further provide that the verification attaches to any device the manufacturer subsequently markets that is identical to that which tested complaint with applicable technical standards. *See* 47 C.F.R. § 2.902(b)

shows, only if accompanied by a conspicuous notice that the devices had not been authorized.¹⁶ In 1997, the Commission reaffirmed that the Section 2.803(c) trade show exception and attendant disclaimer notice requirement applies to all radiofrequency devices that are in the “development, design or preproduction stages” and that are subject to its equipment authorization procedures,¹⁷ including those subject the verification procedures.¹⁸ Consistent with these Commission decisions, manufacturers who exhibited and/or distributed promotional materials regarding non-working mock-ups or prototypes of radio frequency devices at trade shows, without the conspicuous disclaimer notice, have been found in violation of Section 2.803.¹⁹ In the instant case, we find that Schumacher displayed, and distributed promotional materials regarding, SpeedCharger models SC 2500A, SC 4000A and SC 10000A without the requisite disclaimer notice in apparent willful and repeated violation of Section 2.803(a).

B. Verified equipment.

9. Section 15.19(a)(3) of the Rules provides that “[i]n addition to the requirements in part 2 of this chapter, a device subject to . . . verification . . . shall bear the following statement in a conspicuous location on the device: This device complies with part 15 of the FCC Rules. Operation is subject to the

¹⁶ *Interpretation and Amendment of Part 2, Section 2.803 of the Commission’s Rules Relating to the Marketing of Radiofrequency Devices*, 58 FCC 2d 784, 787 ¶¶ 15-16 (1976).

¹⁷ *Matter of Revision of Part 2 of the Commission’s Rules Relating to the Marketing and Authorization of Radio Frequency Devices*, 12 FCC Rcd 4533, 4533 ¶ 1 (1996) (“1996 Order”), *recon. granted*, 13 FCC Rcd 12928 (1998).

¹⁸ *Id.* at 4545 ¶ 24 (finding that further clarification of Section 2.803 to include devices subject to verification within the conditional trade show exception is unnecessary because “[v]erification, and the new declaration of conformity, are equipment authorization procedures” and thus are covered by the Rule).

¹⁹ *See Palmcom International Ltd.*, 8 FCC Rcd 332 (FOB 1993); *see also GVC Technologies, Inc.*, 8 FCC Rcd 6667 (FOB 1993). Regarding the display of non-authorized equipment at trade shows, the *Palmcom* decision stated:

Although the device itself may have been a non-functioning prototype, the displaying of a device that represents a radio frequency device that had not been authorized by the FCC violates Section 2.803 of the FCC’s rules. The displaying of the device, moreover, was a form of advertising which is also prohibited by Section 2.803. The apparent purpose in displaying the device was to market it, namely, to generate either immediate or future orders to buy the device. Often at a trade show or even in a store, there is no intent to sell actual device on display, but the device is used to generate orders. The actual device that is sold may not have been constructed or assembled at the time a purchase order is placed.

8 FCC Rcd at 332. Regarding the distribution of promotional literature regarding non-authorized equipment at trade shows, the *Palmcom* decision stated:

At the computer trade show, Palmcom was also distributing advertising literature describing the features of the Palmcom computer. Since Section 2.803 prohibits the advertising of devices that have not been authorized by the FCC, this advertising literature violated Section 2.803. This violation was independent of the violation resulting from the displaying of the non-functioning prototype computer.

Id.

following two conditions: (1) This device may not cause harmful interference, and (2) this device must accept any interference received, including interference that may cause undesired operation.” Thus, verified devices must be labeled and marketed in accordance with Sections 15.19 and 2.803, respectively.

10. The Commission has not exempted a manufacturer’s display of prototypes or mock-ups of authorized (tested and verified) devices from the above requirements. However, the Commission has recognized that “when the product being demonstrated or displayed is a prototype that is not authorized but the actual product being marketed is properly authorized” the language of the disclaimer notice under Section 2.803 may not be appropriate.²⁰ The Commission has explained:

In many cases, manufacturers continue to use prototypes for display or demonstration purposes, even after obtaining authorization of the final product. If the prototype is consistent with the equipment that was authorized, the prototype may be labeled as authorized and could be marketed without the disclaimer notice. However, if the prototype is not consistent with the equipment that was authorized, it may not be displayed or marketed except under the conditions . . . [set forth in Section 2.803(c)(1) of the Rules with an alternative advisory notice being “Prototype. Not for Sale] . . . However, parties displaying prototypes of authorized products may use additional language, if desired.²¹

Thus, Schumacher was allowed to exhibit mock-ups of SpeedChargers SC 600A, SSC 1000A, SC-1200A, SSC 1500A, and SC 6000A (which were consistent with the verified actual devices), provided that it either labeled each mock-up or displayed an appropriate alternative disclaimer notice.

11. According to Schumacher, the actual working units of SpeedChargers SC 600A, SSC 1000A, SC 1200A, SSC 1500A, and SC 6000A were labeled, but the mock-up models exhibited at AAPEX were not. Although the exhibited models were not labeled, Schumacher’s booth did display an alternative disclaimer notice, which described the SpeedChargers as “FCC Class B Compliant.” Because Schumacher displayed the alternative disclaimer notice, we do not find that it violated the labeling and marketing provisions of Sections 15.19(a)(3) and 2.803(a). However, the displayed alternative disclaimer notice may not have provided AAPEX participants with adequate information, given that Schumacher’s booth exhibited mock-ups of both authorized, and non-authorized, equipment. We thus caution Schumacher to exercise greater care, by labeling or providing alternative advisory notice for identified authorized devices and by utilizing the standard disclaimer notice for identified non-authorized devices.

12. Section 503(b) of the Act,²² and Section 1.80(a) of the Rules,²³ provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission’s rules, and “repeatedly” means more than once.²⁴ Based upon the material before us, it appears that Schumacher

²⁰ 1996 Order, 12 FCC Rcd at 4546 ¶ 26.

²¹ *Id.*

²² 47 U.S.C. § 503(b).

²³ 47 C.F.R. § 1.80(a).

²⁴ See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

willfully and repeatedly violated Section 302(b) of the Act and Section 2.803(a) of the Rules by exhibiting and advertising SpeedCharger models, which had not been authorized in accordance with the verification procedures.

13. Section 1.80(b) of the Rules sets a base forfeiture amount of \$7,000.00 for marketing unauthorized equipment.²⁵ The Commission's *Forfeiture Policy Statement* also specifies that the base forfeiture amounts shall be adjusted based upon consideration of the factors enumerated in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D), such as "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."²⁶ The marketing of each unauthorized Speedcharger model is a separate violation. However, under the circumstances presented here, where no unauthorized units were actually sold, we find that it is appropriate and consistent with precedent to assess a \$7,000 forfeiture.²⁷ We further find Schumacher's commitment to comply with the marketing provisions of Section 2.803(c) in the future commendable, but such post-remedial measure does not lessen, mitigate, or excuse its past violations of the equipment marketing requirements.²⁸

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act²⁹ and Sections 0.111, 0.311 and 1.80 of the Rules,³⁰ Schumacher Electric Corporation **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for willfully and repeatedly violating Section 302(b) of the Act and Section 2.803(a) of the Rules.

15. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture and Order*, Schumacher Electric Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption.

²⁵ 47 C.F.R. § 1.80(b).

²⁶ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17110 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

²⁷ See, e.g., *New Image Electronics*, 17 FCC Rcd 3594, 3595 ¶¶ 4-5 (Enf. Bur. 2002) (imposing a \$7,000 forfeiture against a retailer for marketing several models, and selling at least one model, of non-compliant long-range cordless telephones).

²⁸ See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 ¶ 14 (2002); *KGV L, Inc.*, 42 FCC 2d 258, 259 (1973).

²⁹ 47 U.S.C. § 503(b).

³⁰ 47 C.F.R. § 0.111, 0.311 and 1.80.

17. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

19. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.³¹

20. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this *NAL*, either in your response to the *NAL* or in a separate filing to be sent to the Enforcement Bureau – Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities ("OCBO") set forth in Attachment A of this *NAL*. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

21. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture and Order* shall be sent by first class mail and certified mail return receipt requested to John Waldron, Executive Vice President, Schumacher Electric Corporation, 801 Business Center Drive, Mount Prospect, Illinois 20056-2179, and to David E. Hilliard, Wiley, Rein & Fielding, LLP, 1776 K Street, NW, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

Attachment A

FCC List of Small Entities

³¹ See 47 C.F.R. § 1.1914.

As described below, a “small entity” may be a small organization, a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

Note: With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.